They had paid the plaintiffs all moneys collected by them in respect of the policies but the plaintiffs had failed to supply them with periodical accounts after April, 1966. They were entitled to a commission of 32½% on all premiums paid by clients introduced through their agency whether such premiums were paid through them or direct to the plaintiffs. The plaintiffs promised them an office allowance of $350 per month from June, 1965, up to November, 1966, but the plaintiffs had never paid the allowance.

The defendants counterclaimed for an account to be taken of all business transacted between them and the plaintiffs and for the payment by the plaintiffs of the commission due to them and for the monthly office allowance of $350 per month.

Lee Siang Loo, a partner of the defendant firm, filed two affidavits in answer to the plaintiff's application under Order XIV and in neither of them was any reference made to the acknowledgment he had signed on the 22nd August. He devoted a great portion of his affidavits in making recriminations against the solicitor who was in charge of the present proceedings for the plaintiffs and who in September, 1966, also acted for him in another suit. He said that the last statement of account supplied to him was for the period up to April, 1966, and that he did not receive the statement of account for the period up to 30th June, 1966. All along he had disputed owing the plaintiffs the sum of $17,427.94 and although he did not have the opportunity of checking the account he offered to pay $1,000 per month, as stated in his letter of the 13th August, 1966, but only on condition that a full account would be supplied to him. The plaintiffs instead of supplying the account issued a writ against the defendant firm and he therefore ceased to pay the monthly instalment of $1,000.

As stated no where in the affidavits of Lee Siang Loo did he mention the acknowledgment of the 22nd August. He did not deny that he signed the acknowledgment and he did not set out the circumstances under which it was signed.

On the evidence disclosed on the affidavits it is not surprising that the registrar granted the plaintiffs leave to sign judgment for the sum of $11,619.88 and granted the defendants leave to defend the balance of the plaintiffs' claim.

The defendants appealed to the judge against the order of the registrar. The learned judge allowed the appeal and granted the defendants leave to defend the claim of the plaintiffs indorsed in the statement of claim.

The present appeal is by the plaintiffs against the order of the learned judge.

The learned judge in his grounds of decision said:—

"It is clear from the affidavits filed in these proceedings that no accounts were ever stated or settled between the parties and the main ground for the allegation that the defendants have no valid defence is based on an acknowledgment of indebtedness made by them in respect of a sum of $12,619.88 and the promise that they would repay this in monthly instalments of $1,000. After one such payment they defaulted and this action was therefore initiated.

It is perhaps unfortunate that the same solicitors acted for both the plaintiffs and the defendants or at least, a partner of the defendant firm, in different suits. This has probably given rise, at least indirectly, to the present acrimonious situation between the solicitor concerned and Mr. Lee Siang Loo and the recriminations made against him by the latter. With such allegations and replies I was not really concerned here, except insofar as they show their respective states of mind with regard to the facts in dispute. What they say about each other is therefore of little help to me except in relation to the circumstances in which the acknowledgment of indebtedness, on which the plaintiffs rely, came to be signed. Mr. Lee Siang Loo has tried to explain these circumstances. There is a triable issue here and it is not for me, at this stage, to determine whether his explanation succeeds. There is certainly some cause for not rejecting it out of hand without further inquiry."

The learned judge is clearly wrong in saying that Lee Siang Loo has tried to explain the circumstances in which the acknowledgment of indebtedness came to be signed.

It is clear in this case that the document signed by the defendants on the 22nd August, 1966, contains a clear and unconditional acknowledgement that a sum of $12,619.88 was due and owing by the defendants to the plaintiffs and an unconditional promise to pay it.

For these reasons we allowed the appeal with costs here and the court below and restored the order made by the registrar.

Appeal allowed.

Solicitors: *Braddell Bros.; Pillai & Co.*

SUBRAMANIA PILLAY v. SUNDRAMMAL; PR. KURUPPIAH — 3rd party

[O.C.J. (MacIntyre J.) July 6, 1967]

[Ipoh — Civil Suit No. 38 of 1965]

Practice and Procedure — Third party notice — Application for order to dismiss claim against 3rd party — Jurisdiction — R.S.C. 1957, O. 16A rr. 2 and 7(1)(b) & (2).

On an application by the defendant under O. 16A r. 2 the court granted leave to issue and serve a 3rd party notice on one Karuppiah claiming for indemnity against the plaintiff's claim. Karuppiah entered appearance on March 25, 1965 and thereafter the defendant took no steps to pursue the matter further. When the action came up for trial the 3rd party had not been served with the notice of trial. However he turned up in court and by his counsel made an oral application for an order dismissing the claim against him with costs.

Held: as there was no issue for trial between the defendant and the 3rd party before the court, it had no jurisdiction at that stage of the trial to make an order in respect of the 3rd party notice served on the 3rd party.

Cases referred to:—

(1) *Flower* v. *Todd & Anor.* [1884] W.N. 47, 48.

(2) *Tritton* v. *Bankart* 56 L.J. Ch. D. 629, 630.

APPLICATION.

P. P. Dharmananda for the defendant.

N. Sharma for the 3rd party.

Cur. Adv. Vult.

MacIntyre J.: In this action the plaintiff sues the defendant for $11,300 and interest alleged to be due and owing under a written undertaking signed by one PR. Karuppiah, the duly constituted attorney of the defendant under a power of attorney bearing registration number 611/52 dated the 24th day of July 1952. The defendant denies liability and pleads, *inter alia*, that the alleged contract of loan is not enforceable against her as the said Karuppiah had no authority under the power of attorney to borrow money on her behalf on a personal undertaking.

On an application by the defendant under Order 16A, rule 2 of the Rules of the Supreme Court, 1957, I granted leave to issue and serve on the said Karuppiah a third party notice claiming for indemnity against the plaintiff's claim in this action. The notice was duly served and the third party entered appearance on the 25th of March 1965. Thereafter the defendant took no steps to pursue the matter further. Had she desired to pursue the matter any further she should have taken out a summons for directions under rule 7(1) of the said Order to have the issues settled and the manner of their disposal determined.

Therefore when this action came up for trial before me yesterday quite rightly the third party had not been served with the notice of trial. However, he turned up in court and by his counsel Mr. N. Sharma made an oral application for an order dismissing the claims against the third party with costs. After hearing Mr. Sharma and Mr. Dharmananda on behalf of the defendant, I reserved my decision till today.

Mr. Sharma in his submission contended that the procedure under Order 16A is a special machinery provided for the purpose of resolving all disputes arising or likely to arise out of an action at one hearing so that multiplicity of actions could be avoided. He further submitted that since this action had now come up for trial and judgment without the issue between the defendant and the third party being determined by an order of court as provided under rule 7(1)(b), the very object of Order 16A would be defeated if the defendant is permitted after trial and judgment to apply for directions in respect of the claim against the third party. Hence his application for the dismissal of the claim against his client.

There is some support for the views expressed by Mr. Sharma in *Flower* v. *Todd & Anor.*[1] and in *Tritton* v. *Bankart.*[2] In the former case, Field J. said and I quote:—

> "The very object of these rules as to third party procedure was to prevent the necessity for two trials in such a case."

In the latter, Kekewich J. said as follows:—

> "At any rate, I think the rule points to this — that some application must be made if it is desired to try the question. No application has been made; therefore I think the claim by Cottell against Bankart fails on that account, and that I have in fact no jurisdiction to entertain it."

It would therefore appear from these decisions that not only an application for directions is necessary but that it should be made as soon as possible to avoid two trials. For this reason, to quote the *Annual Practice* 1962 at page 384:—

> "The application is generally made immediately after the appearance of the third party, and at any rate should be made at a stage of the proceedings when it is possible there may still be a trial of the action between plaintiff and the defendant."

Mr. Dharmananda for the defendant submitted that whatever may be the inconvenience caused by the defendant's failure to take out a summons for directions, she was entitled to apply for directions even after judgment by virtue of the provisions of rule 7(2) of the said Order which reads as follows:—

> "Any directions given pursuant to this rule may be given either before or after any judgment has been signed by the plaintiff against the defendant in the action, and may be varied from time to time and may be rescinded."

Mr. Sharma, in his reply, while conceding that the court could give directions even after judgment, maintained that the application should have been filed before the trial of the action.

In my view, the above quoted sub-rule should be read to conform with the general object of Order 16A, namely, the disposal of direct as well as collateral issues at one hearing. I would read the sub-rule to mean exactly what it says and no more. The sub-rule does not say that the court has power to give directions after trial and judgment. All it says is that the court has power to give directions before and after a judgment had been "signed by the plaintiff against the defendant." Surely these words are meant to apply only to judgment obtained under Order 14 without trial of any issue. Therefore an order for directions made after such a judgment would not violate the principle that there should be only one trial and not two.

But in regard to the application by Mr. Sharma to dismiss the claim against the third party, I find myself in the same difficult situation as Kekewich J. was in *Tritton* v. *Bankart, supra*, in that there is no issue for trial between the defendant and the third party before me

and I have no jurisdiction at this stage of the trial to make any order in respect of the third party notice served on Kuruppiah.

I therefore make no order.

No order.

Solicitors: *Dharmananda & Co.; N. Sharma.*

FONG CHONG CHENG v. THE PUBLIC TRUSTEE

[F.C. (Tan Ah Tah F.J., Chua & Ambrose JJ.) July 7, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 16 of 1965]

Land — Action to recover — Right and title — Right of person out of possession extinguished — Limitation Ordinance, 1959, s. 18.

The plaintiff/respondent took charge of the affairs of the estate of *D'A* deceased in 1956 but the letters of administration were granted to him on July 30, 1962. The deceased who was a person of unsound mind died in 1944 intestate. At the time of her death the deceased was the owner of hereditaments in Kallang Road, Singapore, which in August 1934 was leased to the defendant/appellant for a term of ten years at a monthly rent of $120. The lease expired on May 31, 1944 and no rent was paid by the appellant after that date.

On July 1, 1964 the respondent issued a writ against the appellant claiming, *inter alia*, a declaration that he as the administrator of the deceased's estate was entitled to the said hereditaments. The appellant contended that the respondent's alleged claim or right of action was barred by the Limitation Ordinance and that the respondent's right and title, if any, to the said heriditaments were extinguished by virtue of the provisions of the Ordinance. The learned trial judge made the declaration asked for as he was of the view that in the circumstances of the case the Limitation Ordinance, 1959, had no retrospective effect.

On appeal by the defendant:—

Held: (1) in the circumstances of this case, no hardship or injustice would have been caused to the respondent by holding that the Limitation Ordinance had retrospective effect;

(2) applying section 18 of the Ordinance to the facts of this case, the learned trial judge should have held that the right and title of the respondent to the said heriditaments were extinguished.

FEDERAL COURT.

N. A. Mallal (*Tan Peng Khoo* with him) for the appellant.

Po Guan Hock for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: The plaintiff is the administrator of the estate of one Mildred Edith D'Almeida (hereinafter referred to as "the deceased") who died in the year 1944 intestate. letters of administration of the deceased's estate were granted to the plaintiff on the 30th July, 1962. At the time of her death the deceased was the owner of the lands and premises known as Lot 153-3 and Lot 153-4 of Town Subdivision XVII together with the houses erected thereon and known as Nos. 221 and 223 Kallang Road, Singapore (hereinafter referred to as "the said hereditaments").

By an indenture of lease dated the 25th August 1934, the said hereditaments were leased to the defendant for a term of ten years commencing from the 1st June 1934 at a monthly rent of $120. The deceased was a person of unsound mind and the rent was paid by the defendant to various persons who were appointed committee of the deceased's estate with power to manage the same. The lease expired on the 31st May 1944 and it is clear that no rent was paid by the defendant after that date.

On the 1st July 1964 the plaintiff issued a writ against the defendant claiming, *inter alia*, a declaration that the plaintiff as the administrator of the deceased's estate was entitled to the said hereditaments. Pleadings were filed and the defendant by his defence contended that the plaintiff's alleged claim or right of action was barred by the Limitation Ordinance, 1959 and that the plaintiff's right and title, if any, to the said hereditaments were extinguished by virtue of the provisions of that Ordinance. The action was duly heard and in the result the learned trial judge made the declaration asked for by the plaintiff and also granted him certain other reliefs which he had claimed. It is against this decision that this appeal has been brought by the defendant.

In his grounds of judgment the learned judge expressed the view that in the circumstances of this case the Limitation Ordinance, 1959 had no retrospective effect. It is necessary to consider whether this is a correct view of the law.

As a result of the Japanese occupation of Singapore the Limitation (Amendment) Ordinance, 1949 was enacted. This provided, *inter alia*, that in computing the period of limitation prescribed for any suit the period commencing on the 15th February 1942 and ending on the 30th September 1949 should be excluded. In this case, therefore, time began to run as from the 1st October 1949 and the relevant twelve-year period came to an end on the 30th September 1961.

The affairs of the deceased's estate were placed in the charge of the plaintiff in the year 1956. The Limitation Ordinance, 1959 did not come into force until the 11th September 1959. When it did come into force, the plaintiff still had a period of over two years, that is to say, from the 11th September 1959 to the 30th September 1961, within which he could have taken steps to enforce whatever rights he had against the defendant. It is clear, however, that he did not take the necessary steps to safeguard his rights.